

WILLIAM O'MALLEY

February 19, 2006

Office of the General Counsel
Federal Election Commission
999 E Street NE
Washington, DC 20463

MUR # 5716

2006 MAR 15 A 9:22

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RE: Failure to report debts

Dear Office of the General Counsel:

This is an official complaint against Garrett Lott ("Respondent"), treasurer for the Ashcroft 2000 Committee ("Committee"), for failure to report monies owed by the Committee as debts as required under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Title 11 of the Code of Federal Regulations.

A review of the Committee's reports and enclosed information reveals that the Committee potentially owes outstanding tax liabilities to the Internal Revenue Service ("IRS") and the Missouri Director of Revenue ("DOR") for the employer's share of its federal and state payroll (employment) taxes.

Employers are liable for their share of Federal Insurance Contributions Act (FICA) taxes as well as for Federal Unemployment Tax Act (FUTA) taxes under sections 3111 and 3301 of the Internal Revenue Code (IRC). These taxes are generally referred to as "employment taxes".

Said employment taxes are defined and imposed for both the employee and employer under Sections 3121(d), 3306(a), and 3401(c) and (d) of Subtitle C and the relevant regulations. Other collective tax obligations imposed on the Committee, in its role as an employer, include making timely tax deposits, filing employment tax returns, and issuing wage statements (Forms W-2) to employees.

In 2000, I worked for and on behalf of the Committee. On June 30, 2000, I left the employ of the United States Senate, where I was employed on then Senator John Ashcroft's Senate staff. On July 1, 2000, I transitioned to the employ of the Committee.

From July 1, 2000 through August 15, 2000, I was paid as a salaried employee of the Committee. On August 23, 2000, Respondent changed my employment status from an employee to that of an independent contractor. Respondent subsequently backdated the change in my employment status to August 16, 2000. Beginning on August 16, 2000, I was paid as an independent contractor (campaign consultant).

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Respondent's motivation for changing my employment status was to enable the Committee to accept a tax reduction under the IRC in its employment taxes owed to the IRS with respect to my income. As later found by the IRS, it was not entitled to the reduction in its tax liabilities. The Committee was duly informed of its noncompliance with the Federal tax laws.

The Committee made regular payments to the IRS and the DOR in 2000 and 2001 for employment taxes. Those liabilities were incurred due to the Committee's working relationship with its staff. A portion of these payments was for employment taxes that the Committee was required to pay as an employer. Those monies did not include monies owed by the Committee with respect to the portion my wages for which I received a 1099.

For services I provided to the Committee, I consequently received both a W-2 and a 1099-Misc. After efforts to have the Committee voluntarily comply with its legal obligations, I submitted Form SS-8 to the IRS to request a determination of my employment status for Federal employment tax purposes. The form was filed with the IRS on April 15, 2004.

After I requested a determination of my employment status with Ashcroft 2000 while under its employ, the IRS gave the Committee the opportunity to complete the same form. As noted on Form SS-8, an opportunity to present a statement of facts is extended to the firm, as the IRS's decision affects the employment tax status and liabilities of both parties.

In other words, additional tax liabilities, specifically the employer's share of the Committee's employment taxes, would be assessed to the Committee if the IRS found that I was an employee for Federal tax purposes during this time. Ashcroft 2000 took advantage of the opportunity and completed Form SS-8.

In response to the filing, the IRS stated its findings in an information letter, dated September 21, 2004, which was addressed to the Committee. "Well-established principles of tax law" formed the basis of the decision, as noted by the IRS.

As outlined, the IRS found,

1. I was an employee for the duration of my working relationship with the Committee.
2. The Committee accepted a reduction in its Federal employment taxes with respect to income paid to me.
3. The IRS informed the Committee through official correspondence that it was not entitled to the reduction that it took in its employment taxes with respect to my income.
4. The IRS additionally informed the Committee that it is/was not in compliance with the IRC.

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5. The IRS encouraged the Committee to *comply* by filing amended returns; thereby indicating that the Committee was not in compliance at the time the letter was issued.

The Operations Manager explained the decision as follows:

"The worker (Complainant) received a Form W-2 and a Form 1099 from you in the course of the work relationship, and his services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case."

After the Committee took an unlawful reduction in its Federal employment taxes with respect to my income, the IRS informed the Committee:

"Since a portion of the income received by the worker is/was incorrect due to an error in interpreting wages and/or employment as defined in the Internal Revenue Code (IRC) sections 3121(a) and 3121(d), respectively, you would not qualify for the reduced rates under IRC section 3509."

To comply with the Federal tax laws, the Committee was required to amend its employment tax returns. The IRS noted,

"You are encouraged to comply by adjusting your tax returns accordingly."

Section 6001 authorizes the IRS to request information needed to determine whether the worker or firm is responsible for these taxes. While not required to make the submission, the letter acknowledges that the Committee submitted the form. Providing false or fraudulent information may subject the Committee/Respondent to other liabilities, including referral to the United States Department of Justice.

The IRS further noted,

"We (IRS) are issuing this information letter based upon information provided by both you (Committee) and the worker (Complainant)."

See Attachment A. All emphases added.

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I received a courtesy copy of the letter. Attachment A is a true and complete copy of the letter received by Respondent as provided to me by the IRS..

The information letter does not constitute the IRS's entire response to the Committee. It is simply the only document mailed to the Committee that was made available to me. The Committee received additional forms and instructions to assist it in complying with the Federal tax laws. The letter specifically notes that an "Information Guide" was included with the letter. The guide is designed to assist the Committee to comply with Federal tax laws.

An Operations Manager with the SS-8 Unit commented, "In those cases, we send out an information letter because the firm already knows that it is against the law to issue a W-2 and 1099." She informed me that an information letter is advisory in nature and that it serves as a(n) official, formal, and substantive advisory to the firm (Committee) for the following:

1. The issuance of a W-2 and 1099 for the same employee in a time where there was no substantial change in his or her duties constitutes a violation of well-established Federal tax laws.
2. In the erroneous treatment of an employee as an independent contractor, the firm (Committee) accepted a tax reduction to which it was not entitled.
3. The firm (Committee) is therefore liable for additional taxes with respect to the employee's wages (i.e., employment taxes).
4. The firm (Committee) is/was out of compliance with the IRC.
5. To comply, the firm (Committee) must amend its appropriate payer documents with the IRS, including a Corrected Wage and Tax Statements (Forms W-2c and W-3c) for the relevant tax periods.
6. The amendment process requires the firm to reissue an amended 1099 for the relevant tax periods, which should reflect a zero balance.
7. The firm may incur additional interest and liabilities during its noncompliance.
8. Failure to comply constitutes a continued violation of well-established Federal tax laws.

The Commission may call the SS-8 Unit at (631)654-6025 to corroborate all of the information.

Reasonableness dictates that the Committee retains an undisclosed debt burden owed to the IRS and DOR in consideration of these submissions:

1. The Committee's disclosure reports itemize no disbursement to the IRS or DOR for back taxes related to this matter after it received official notice of its noncompliance.

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2. The Committee's disclosure reports disclose no debts related to the IRS or DOR for back taxes.
3. As Respondent's motivation constitutes a knowing attempt to accept and benefit from a tax reduction to which the Committee was not lawfully entitled, it is presupposed that monies are owed the IRS for the employer's payroll taxes due to Respondent's knowing misclassification of my worker status.
4. As the DOR relies on the IRS for its classifications of workers, it is also presupposed that additional monies are owed to the DOR for the Committee's employer payroll taxes from the state.

The federal regulations are unambiguous. Outstanding debts must be reported and continuously reported on Schedule C or D if more than \$500.00 or 60 days from the date of the transaction if less than \$500.00 11 CFR 104.3(d) and 104.11.

I reasonably ascertain that the Committee's debts owed to the IRS and DOR are more than \$500.00. Further, those debts are more than 60 days past due.

Federal regulations require that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished 11 CFR 104.11 (a). Potential debts must also be reported. As previously noted, the IRS encouraged the Committee to come into compliance with the IRC. The Committee's reports, however, disclose no information that it met its lawful obligations.

While specific evidence was offered to the contrary, Respondent apparently asserted in MUR 5298 that the Committee paid me my entire income in 2000. That claim is contradicted by the tax documents provided to me by the Committee. Nevertheless, it was offered in an official proceeding before this Commission. I submit that Respondent may not now rescind that claim in amending the Committee's employment tax returns.

According to a representative of the IRS (ID# 1600611), employers must pay certain payroll taxes to the federal government on their employees' wages.

These include 6.2% of the employee's wage for social security taxes, 1.45 percent of the employee's wage for Medicare taxes, and 6.2 percent of the first \$7,000.00 of the employee's wage for unemployment taxes (FUTA). After the \$7,000.00 benchmark is reached, FUTA taxes are then paid at 0.8 percent.

A reasonable estimation of the Committee's outstanding tax liabilities owed only to the federal government is as follows (based on miscellaneous income of \$8,700.00):

Employer Social Security Taxes (6.2% X \$8,700.00)	\$539.40
Employer Medicare Taxes (1.45% X \$8,700.00)	\$126.15
Employer FUTA Taxes (first \$7,000.00)(6.2% X \$2,500.00)	\$155.00
Employer FUTA Taxes (0.8% X \$6,200.00)	<u>\$ 49.60</u>

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Estimated Total

\$870.15

The above estimation excludes any interest and penalties that may be assessed against the Committee. Additional employment taxes are ostensibly owed to the DOR.

The Committee's reports, which were filed after it received notice of its noncompliance, disclose no disbursements to the IRS or DOR for the outstanding tax obligations owed by the Committee. Those reports also disclose no debts potentially owed to either taxing entity.

In Respondent's failure to extinguish the Committee's debt burden with respect to payroll taxes or report those debts, I reasonably assert that Respondent violated his reporting requirements under the Act.

I reasonably contend that the Committee possesses an undisclosed debt burden owed to the IRS and DOR for employment taxes not previously paid by the Committee with respect to my income. It is further reasonably assumed that those debts include additional monies owed for penalties and interest.

While these tax obligations exist from 2000, Respondent did not receive information from the IRS of the Committee's noncompliance until September 2004. Neither Respondent nor the Committee could have been reasonably expected to report the tax debts owed until the Committee received said information. The statutes of limitation must consequently be assessed from that date.

I hereby request the Commission to conduct an investigation into these allegations, declare the Respondent has violated the federal campaign finance laws, impose sanctions appropriate to these violations, require the committee to file amended reports, and take such further action as may be appropriate.

Sincerely,



Bill O'Malley

Enclosure

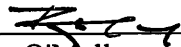
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VERIFICATION

The Complainant listed below hereby verifies that the statements made in the attached Complaint are, upon his information and belief, true.

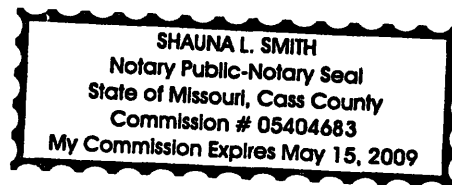
Sworn to pursuant to 18 U.S.C. 1001.

Complainant:


William O'Malley

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 21st day of Feb, 2006.


NOTARY PUBLIC



My Commission expires: 5-15-09

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Internal Revenue Service
SB/SE, Compliance
BIRSC, SS-8 Unit

Department of the Treasury
1040 Waverly Avenue-Stop 631
Holtsville, NY 11742

Date: September 21, 2004

Ashcroft 2000
147 N. Meramic Ste 100
Clayton, MO 63105

Form: SS-8

Person to Contact:
Carla Zuckerman ID#19-03957

Telephone: 631-654-6025 x 1431
Facsimile Number: 631-654-6338

Refer Reply to: Case # 35180

Dear Sir or Madam:

This is in response to a Form SS-8 that was submitted requesting a determination of employment status for Federal employment tax purposes between Ashcroft 2000, hereafter referred to as the payer, and William N. O'Malley, hereafter referred to as the worker.

The Operations Manager may choose to issue an information letter in lieu of a determination letter to provide information to the taxpayer regarding well-established principles of tax law. We are issuing this information letter based upon information provided by both you and the worker.

Information submitted indicates that the payer is a Political Committee. The worker was engaged by the payer as a Field Representative and received both a W-2, and a 1099-Misc at year-end in 2000. The worker's services did not change.

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099 from you in the course of the work relationship, and his services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Many religious, charitable, educational, or other nonprofit organizations are exempt from Federal income tax. However, they must withhold Federal income tax from their

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employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes. Payments for services performed by an employee of a nonprofit that is other than a section 501(c)(3) organization, are also subject to FUTA tax if the payments are \$50 or more in a calendar quarter.

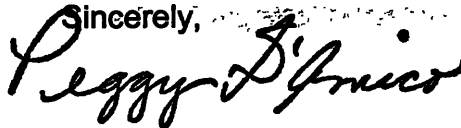
Whenever you pay the **employee's** social security and Medicare tax in lieu of collecting it from the employee, this amount must be included in the employee's wages for income, social security, Medicare and Federal unemployment tax purposes.

Since a portion of the income received by the worker is/was incorrect due to an error in interpreting wages and/or employment as defined in Internal Revenue Code (IRC) sections 3121(a) and 3121(d), respectively, you would not qualify for the reduced rates under IRC section 3509.

You are encouraged to comply by adjusting your employment tax returns accordingly. For information and instructions concerning the amendment of your employment tax returns, please see the enclosed Information Guide, "Frequently Asked Questions When IRS Reclassifies Workers as Employees." For further clarification of issues regarding supplemental wages, you may wish to obtain a copy of Publication 15, "Circular E, Employer's Tax Guide."

If you need further assistance in amending your employment tax returns, please call the **IRS help line at 1-800-829-4933**. Also, you may call 1-866-455-7438 for assistance in preparing or correcting Forms W-2, W-3, 1099, 1096, or other information returns.

Sincerely,



Peggy D'Amico
Operations Manager

Enclosures: Information Guide

*To order forms and publications, please call 1-800-TAX-FORM or visit us online at www.irs.gov.

cc: William N. O'Malley